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**OCT 20 2014**

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Central District of California  
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## **NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**NORTHERN DIVISION**

In re:

JOHN SPERRY REYNOLDS,

Alleged Debtor.

Case No. 9:14-bk-10690-PC

Chapter 11

### **MEMORANDUM DECISION**

Date: October 8, 2014

Time: 9:30 a.m.

Place: United States Bankruptcy Court

Courtroom # 201

1415 State Street

Santa Barbara, CA 93101

John Sperry Reynolds (“Reynolds”), against whom an involuntary case under chapter 11 was commenced on April 7, 2014, and dismissed on September 22, 2014, pursuant to 11 U.S.C. § 305(a)(1),<sup>1</sup> seeks a judgment against Summerland Market, Inc. and Elian Hanna (“Petitioning

<sup>1</sup> Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 after its amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). “Rule” references are to the Federal Rules of Bankruptcy Procedure (“FRBP”), which make applicable certain Federal Rules of Civil Procedure (“F.R.Civ.P.”). “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”).

Creditors”) for actual and punitive damages, reasonable attorneys’ fees, and costs pursuant to 11 U.S.C. § 303(i) (“Reynolds’ § 303(i) Motion”). The Petitioning Creditors oppose the motion. Having considered the papers, the evidentiary record, and arguments of counsel, the court grants Reynolds’ § 303(i) Motion, in part, and denies the motion, in part, based upon the following findings of fact and conclusions of law made pursuant to F.R.Civ.P. 52(a), as incorporated into FRBP 7052 and applied to contested matters by FRBP 9014(c).

### I. STATEMENT OF FACTS

On April 7, 2014, the Petitioning Creditors filed an involuntary petition against Reynolds in this case. The Petitioning Creditors were joined by John A. Strange who filed a Joinder of Creditor in Involuntary Petition Pursuant to 11 U.S.C. § 303(c) on April 30, 2014. On May 16, 2014, Reynolds filed a motion seeking (a) dismissal of the involuntary petition pursuant to 11 U.S.C. § 303; (b) dismissal under 11 U.S.C. § 707(a); or (c) abstention and dismissal of the involuntary petition under 11 U.S.C. § 305(a)(1). The Petitioning Creditors filed a response in opposition to Reynolds’ motion on June 11, 2014, to which Reynolds filed a reply on June 18, 2014.

At a hearing on July 30, 2014, the court granted Reynolds’ motion insofar as it sought abstention and dismissal under 11 U.S.C. § 305(a)(1) and denied the motion insofar as it sought a dismissal under either 11 U.S.C. § 303 or 11 U.S.C. § 707(a). In so holding, the court stated:

[T]he court has determined that it will abstain from hearing the case because both the putative debtor and the petitioning creditors would be best served by abstention and dismissal. It would not – it would be inefficient and uneconomical for the case to proceed [in] this court because this is essentially a two-party dispute. Elia Hanna and Summerland Market, Incorporated, have a judgment for \$798,472.87, which comprised 98 percent of the claims of the petitioning creditors. There is a pending state court action. There was litigation – post-judgment motions pending in that case at the time of the filing of the involuntary petition.

The state court – the involuntary petition came after the entry of a judgment after a jury trial. Superior Court entered a judgment on February 25, 2014. It appears that the petitioning creditors may have filed the petition to delay a hearing on a motion for new trial in the Superior Court that was set for the following day, April 8, 2014.

1 The Court believes that abstention is also in the best interests of the putative  
2 debtor because as stated – as indicated in the evidentiary record by declaration  
3 from [the] putative debtor, his reputation as a real estate agent is or will be or is  
currently being damaged as due to the pendency of the involuntary bankruptcy  
petition.

4 The Court believes the issues that are in dispute between the majority of the  
5 petitioning creditors and the putative debtor can be resolved in state court by  
6 virtue of further proceedings on a motion for new trial or on appeal or  
7 enforcement of a judgment absent some type of supersedeas bond, but these are  
all state court issues, state law issues that can be resolved in a state court, not in  
Bankruptcy Court.<sup>2</sup>

8 The court further denied without prejudice the movant's request for attorneys' fees and  
9 costs, but stated that "the case will remain open for a period of 30 days pending a filing by  
10 movant if movant elects to do so [a] motion seeking attorney's fees and costs pursuant to Section  
11 303(i)."<sup>3</sup> An Order Denying Motion to Dismiss Involuntary Petition and Granting Alleged  
12 Debtor's Motion to Abstain ("Order") was entered on September 22, 2014. The Order stated, in  
13 pertinent part:

14 ORDERED that the Court denies [sic] the motion to dismiss pursuant to 11 U.S.C.  
15 § 303(b) and the alternative relief requested under 11 U.S.C. § 707; and it is  
16 further

17 ORDERED that the Court grants the motion to dismiss under the provisions of 11  
18 U.S.C. § 305(a)(1) inasmuch as the Court finds that under the totality of the  
19 circumstances that the interests of creditors and the debtor will be served by a  
dismissal under that Section; and it is further

20 ORDERED this case will be kept open thirty (30) days from the hearing on the  
21 Motion in order for the Movant, if the Movant elects to do so pending the filing of  
22 a motion seeking attorney's fees and costs under § 303(i), and thereafter will  
23 abstain from any further matters in this case pursuant to 11 U.S.C. § 305; and it is  
24 further

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27 <sup>2</sup> Transcript of Hearing Re: Motion to Dismiss [Dkt # 49], 12:16 - 13:23 ,

28 <sup>3</sup> Id. at 14:3-6.

1 ORDERED that unless a hearing on a motion for sanctions is filed and heard  
2 within thirty (30) days from the hearing on the Motion, this case will be closed  
and no further proceedings will take place in this case . . . .<sup>4</sup>

3 Reynolds' § 303(i) Motion was filed on August 29, 2014. On September 12, 2014, the  
4 Petitioning Creditors filed their response in opposition to Reynolds' § 303(i) Motion asserting,  
5 among other things, that Reynolds' motion was untimely under the terms of the Order.

6 After a hearing on October 8, 2014, the court determined that Reynolds' § 303(i) Motion  
7 was timely<sup>5</sup> and took the remaining issues under submission.

## 8 II. DISCUSSION

9 This court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157(b) and  
10 1334(b). This contested matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and  
11 (O). Venue is appropriate in this court. 28 U.S.C. § 1409(a).

### 12 A. The Order Did Not Limit the Jurisdiction of the Court to Consider Relief Requested 13 Under 11 U.S.C. § 303(i)

14 In their opposition, the Petitioning Creditors repeatedly assert that the court relinquished  
15 jurisdiction to consider Reynolds' § 303(i) Motion insofar as it seeks actual and punitive  
16 damages under 11 U.S.C. § 303(i)(2), and that the court lost jurisdiction to consider the motion  
17 insofar as it seeks an award of attorneys' fees and costs under 11 U.S.C. § 303(i)(1) thirty days  
18 after the hearing on July 30, 2014. Nothing could be further from the truth.

19 Bankruptcy jurisdiction is governed by statute. 28 U.S.C. § 1334. That jurisdiction is not  
20 limited, relinquished, or otherwise affected by the closing or reopening of a bankruptcy case.  
21 See, e.g., Menk v. Lapaglia (In re Menk), 241 B.R. 896, 906 (9th Cir. BAP 1999) "[T]here is no  
22 jurisdictional requirement that a closed bankruptcy case be reopened before 'arising under'

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23  
24 <sup>4</sup> Order [Dkt. #51], 2:7-18 (emphasis added).

25 <sup>5</sup> On October 1, 2014, Reynolds filed a motion seeking to correct the language of the Order to  
26 make it conform to the court's ruling by deleting the words "and heard" from page 2, line 18 of  
27 the Order. The motion was set for hearing on October 8, 2014, on shortened notice, and the  
28 Petitioning Creditors were given an opportunity to respond. At the hearing on October 8, 2014,  
the court granted Reynold's motion and ordered that the words "and heard" be stricken from the  
Order.

jurisdiction can be exercised to determine whether a particular debt is excepted from discharge.”); Koehler v. Grant, 213 B.R. 567, 569 (8th Cir. BAP 1997) (“The court’s jurisdiction does not end once a plan is confirmed or the case is closed.”). Under no circumstances did the court limit, lose or relinquish its statutory jurisdiction simply by setting a deadline in the Order for Reynolds to file the Reynolds’ § 303(i) Motion or stating that the case would be closed if the motion was not timely filed.

B. Reynold’s Motion for an Award of Actual and Punitive Damages Pursuant to 11 U.S.C. § 303(i)(2) Will Be Denied

Reynolds seeks an award of “damages proximately caused by the filing of \$100,000.00, and punitive damages at the Court’s discretion, but no less than \$78,000.00.” Reynolds claims that “[t]he damages and punitive damages are warranted because the petitioning creditor Elian Hanna and Summerland Market, Inc. filed the initial petition in bad faith.” The Petitioning Creditors oppose the request, arguing that “[t]his Court found that the petition was filed in good faith and not in violation of 11 U.S.C. § 303, and it did not dismiss the case under the provisions of said section.” Petitioning Creditors further assert that abstention and dismissal under 11 U.S.C. § 305(a)(1) cannot give rise to a damage claim under 11 U.S.C. § 303(i)(2). Petitioning Creditors are wrong on both counts.

First, Petitioning Creditors’ assertion that the court made a finding of good faith is belied by the Transcript of the hearing on July 30, 2014. The court made no express finding with respect to the issue of whether or not the involuntary petition was filed in good faith. The court found that the Petitioning Creditors had standing to file the involuntary petition, but elected to abstain and dismiss under 11 U.S.C. § 305(a)(1), rather than grant the alternative relief requested under either 11 U.S.C. § 303 or 11 U.S.C. § 707(a), given the facts and circumstances of the case.

Second, the Petitioning Creditors in their response misrepresent the holding in Wechsler v. Macke Int’l Trade, Inc. (In re Macke Int’l Trade, Inc.), 370 B.R. 236 (9th Cir. BAP 2007). Petitioning Creditors cite correctly the selected language of Macke Int’l’s footnote 12, which states: “The legislative history further instructs that ‘[d]ismissal in the best interests of creditors

1 under section 305(a)(1) would not give rise to a damages claim.” Id. at 251 n.12. However, this  
2 language is taken completely out of context. In Macke Int’l, the bankruptcy court abstained and  
3 dismissed an involuntary petition under 11 U.S.C. § 305(a)(1), awarded attorneys’ fees of  
4 \$20,000, and denied a request for punitive damages. Id. at 244. The BAP affirmed, holding with  
5 respect to punitive damages that the bankruptcy court did not err in denying an award of punitive  
6 damages having determined that the involuntary petition was not filed in bad faith. Id. at 257.  
7 The BAP did not hold, nor can Macke Int’l reasonably be interpreted as holding, that as a matter  
8 of law actual and/or punitive damages are not authorized under 11 U.S.C. § 303(i)(2) upon  
9 abstention and dismissal of an involuntary petition under 11 U.S.C. § 305(a)(1).

10 Section 303(i) states that “[i]f the court dismisses a petition under this section other than  
11 on consent of all petitioners and the debtor, and if the debtor does not waive the right to  
12 judgment under this subsection, the court may grant judgment –

13 (1) against the petitioners and in favor of the debtor for -- (A) costs; or (B) a reasonable  
14 attorney’s fee; or

15 (2) against any petitioner that filed the petition in bad faith for -- (a) any damages  
16 proximately caused by such filing; or (B) punitive damages.

17 11 U.S.C. § 303(i). “Punitive damages are awardable ‘against any petitioner that filed the  
18 petition in bad faith.’” Macke Int’l, 370 B.R. at 256. “The Bankruptcy Code does not define  
19 ‘bad faith’ for purposes of awarding punitive damages under § 303(i).” Jaffe v. Wavelength, Inc.  
20 (In re Wavelength, Inc.), 61 B.R. 614, 619 (9th Cir. BAP 1986). “Bad faith [is] measured by an  
21 ‘objective test’ that asks ‘what a reasonable person would have believed.’” Id. “In the Ninth  
22 Circuit, the bankruptcy court can allow punitive damages without having to award compensatory  
23 or actual damages, or in addition to those damages.” Macke Int’l, 370 B.R. at 256; Wavelength,  
24 61 B.R. at 621.

25 Although no express finding was made as to “bad faith” at the hearing on July 30,  
26 2014, the court does not believe that an award of either actual or punitive damages is merited  
27 under 11 U.S.C. § 303(i)(2). While the findings made on the record at the hearing on July 30,  
28 2014, might support a finding of ill-will between Reynolds and the Petitioning Creditors, the

1 court is not convinced that the Petitioning Creditors' behavior rises to the level of malicious or  
2 vengeful given the totality of the circumstances. Even if the court were to find bad faith, there is  
3 no evidence to support Reynolds' claim of \$100,000 in actual damages nor to measure Reynolds'  
4 claim of not less than \$78,000 in punitive damages. Finally, the court implicitly denied  
5 Reynolds' request for damages under 11 U.S.C. § 303(i)(2) at the July 30th hearing and in the  
6 Order by limiting Reynolds' relief under 11 U.S.C. § 303(i) to a request for reasonable attorneys'  
7 fees and costs. For these reasons, Reynolds' request for damages under 11 U.S.C. § 303(i)(2) is  
8 denied.

9 C. Reynold's Motion for an Award of Attorneys' Fees and Costs Pursuant to 11 U.S.C. §  
10 303(i)(1) Will Be Granted

11 "[T]he plain meaning of § 303(i) provides that, unless an involuntary petition has been  
12 dismissed with the parties' consent, and without the debtor's waiver of the right to judgment  
13 under § 303(i), the bankruptcy court, based upon the totality of the circumstances, may, in its  
14 discretion, award attorney's fees and costs under § 303(i)(1) for a § 305(a)(1) dismissal of an  
15 involuntary petition." Macke Int'l, 370 B.R. at 253. "[I]n the Ninth Circuit, the presumption is  
16 that, upon dismissal of an involuntary petition, attorney's fees and costs are to be awarded to the  
17 alleged debtor whether or not the filing was in bad faith." Id. at 255.

18 Unlike fee awards under 11 U.S.C. § 330, the statute, rules, and case law  
19 interpreting § 303 have not delineated clear standards for finding whether a  
20 particular fee is justified. At a minimum, however, compensation should be  
21 reasonable. Any award should also be based on detailed accounts of services  
22 rendered. Although the type of fee application used for § 330 awards is not  
23 requisite, the records submitted in a § 303(i) setting should clearly identify the  
24 nature of work performed, its relevance to the defense of the involuntary petition,  
25 and the time expended.

26 Wavelength, 61 B.R. at 621. "[A] bankruptcy court has broad discretion to determine the  
27 number of hours reasonably expended." Macke Int'l, 370 B.R. at 254.

28 In this case, the court will award Reynolds reasonable attorneys' fees and costs  
pursuant to 11 U.S.C. § 330(i)(1). Reynolds requests an award of attorneys' fees in the amount  
of \$26,450. However, the only evidence submitted to permit the court to determine the  
reasonableness of the fees sought by Reynolds is the Declaration of Martin P. Cohn [Dkt. # 48]


1 filed on September 12, 2014. Mr. Cohn states in his declaration that he spent no less than “66  
2 hours of attorney time on this matter” billed at a rate of \$400 per hour. The declaration does not  
3 state when the services commenced nor indicate when the last of the 66 hours of services was  
4 completed. Nor is the declaration supported by contemporaneous itemized time records  
5 indicating the nature of the work performed, the date performed, or the time expended. Without  
6 this information, the court is unable to make a finding that the award of attorneys’ fees sought by  
7 Reynolds is reasonable.

8 Accordingly, the court will order that Reynolds’ counsel file and serve, not later than  
9 November 7, 2014, a declaration supported by contemporaneous time records describing in detail  
10 the legal services rendered and costs advanced to Reynolds for which compensation is sought to  
11 defend the involuntary petition. The declaration must include (1) a description of each task; (2)  
12 the time spent on such task; and (3) the rate charged for such task. Any response to the  
13 declaration must be filed and served by the Petitioning Creditors not later than November 21,  
14 2014. Reynolds may file and serve a reply not later than November 28, 2014.

15 A separate order will be entered consistent with this Memorandum Decision.

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24 Date: October 20, 2014

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26 Peter H. Carroll  
27 United States Bankruptcy Judge  
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